

**AGREEMENT BETWEEN CITY OF MILPITAS AND
MILPITAS UNIFIED SCHOOL DISTRICT FOR
THE PROVISION OF TRANSPORTATION SERVICES
SUMMER 2004**

**DRAFT
15**

This Agreement is made by and between the City of Milpitas, a Municipal corporation of the State of California (hereinafter referred to as "City") and the Milpitas Unified School District (hereinafter referred to as "District") at Milpitas, California.

RECITALS

- A. City requires certain transportation services for the busing of local children to sites within and without the City for various activities.
- B. District is qualified to provide these services and is willing to furnish them in accordance with the terms and conditions of this Agreement.

In consideration of the mutual covenants and conditions herein contained the parties agree as follows:

AGREEMENT

1. General - City engages District to perform transportation services pursuant to the covenants and conditions of this Agreement at their compensation herein stipulated and District accepts engagement upon these terms.
2. Term - This Agreement shall become effective **June 21, 2004**, and shall terminate on **August 13, 2004**, unless otherwise terminated or extended pursuant to this Agreement.
3. Scope of District's Duties and Services - The scope of District's duties and services is set out in Exhibit "A", which is attached hereto and incorporated by reference herein.
4. Payment by City: Time and Manner of Payment - City shall pay District for all services to be rendered by it under this Agreement the amount specifically set forth and in the manner specifically set forth on Exhibit "B", which is attached hereto and incorporated by reference herein. District agrees to accept this sum as full compensation for all services due under this Agreement. City's representative shall be responsible for obtaining a purchase order from City's Finance Department to encumber the funds for Agreement.
5. Equal Employment Opportunity - District shall not discriminate against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, sexual orientation age, physical or mental disability, medical condition, marital status or by a legal denial of family care leave.
6. Compliance With Laws - District shall comply with all current federal, state, local laws, statutes, ordinances, rules and regulations and the orders and decrees of any court or administrative body or tribunal in any manner affecting the performance of this Agreement.
7. Independent Contractor - District is acting as an independent contractor in furnishing the services or materials and performing the work required by this Agreement is not an agent, servant or employee of City.
8. Indemnification to the Fullest Extent Permitted by Law - District agrees to indemnify, defend with counsel reasonably acceptable to City and hold harmless City, its officers and employees from all cost, expenses, claims, suits, judgments, demands, causes of action, losses, liabilities or damages arising out of or in any way connected with the intentional or negligent act or omission of the District, District's officers, employees, agents, contractors, subcontractors or any officer, agent or employee thereof including without limitation those relating to injury or death of any person or damage to any property.

To the fullest extent permitted by law City agrees to indemnify, defend with counsel reasonably acceptable to District and hold harmless, District, its officers and employees from all costs, expenses, claims, suits, judgments, demands, causes of action, losses, liabilities or damages arising out of or in any way connected with the intentional

or negligent act or omission of the City, City's officers, employees, agents, contractors, subcontractors or any officer, agent, or employee thereof including without limitation those relating to injury or death of any person or damage to any property.

9. Insurance

a. General Liability - District agrees to maintain and pay for a general liability policy naming City, its officers and employees as additional insureds and insuring them against liability or financial loss resulting from injuries occurring to persons or property, in or about or in connection with the work to be performed under this Agreement. Each policy of insurance shall provide primary coverage on an occurrence basis in a company satisfactory to City in the following minimal amounts: personal injury - \$1,000,000 for each person and \$1,000,000 per occurrence; property damage - \$1,000,000 per occurrence. Each policy shall provide that it shall not be canceled without 30 day's prior written notice to City. The general liability policy shall provide (a) if City, its officers or employees have other insurance against the loss covered by said policy said other insurance shall be excess insurance only, and (b) that City, its officers and employees are not precluded from claim under said policy against other insured parties.

b. Workers Compensation - District agrees to comply with all State requirements relating to workers compensation insurance and to provide the same for its employees.

c. District shall file certificates and endorsements of insurance with City in a form satisfactory to City attorney upon execution of this Agreement evidencing said coverage and the requirements of this paragraph. The certificates and endorsement shall contain a reference to the date and title of this Agreement. All of the insurance companies providing insurance for District shall have an A. M. Best & Company rating of "A 8" or above. The certificates and endorsements shall be mailed to:

City Clerk
City of Milpitas
455 East Calaveras Boulevard
Milpitas, CA 95035.

10. City Representative - Dale Flunoy shall represent City in all matters pertaining to the services to be rendered under this Agreement; all requirements of City pertaining to the services to be rendered under this Agreement shall be coordinated through the City representative.

11. District Representative - Keith Walker, Director of Maintenance Operations and Transportation shall represent District in all matters pertaining to the services and materials to be rendered under this Agreement. All requirements of District pertaining to the services to be rendered under this Agreement shall be coordinated through the District representative.

12. Notices - Unless otherwise provided herein all notices required hereunder shall be given by United States registered or certified mail or other form of mail which offers proof of mailing postage prepaid and addressed to the party at the address below:

City: City Manager
City of Milpitas
455 E. Calaveras Boulevard
Milpitas, CA 95035

District: Milpitas Unified School District
Assistant Superintendent - Business Services
1331 E. Calaveras Blvd.
Milpitas, CA 95035

13. Assignment - Neither party shall assign nor sublet any portion of this Agreement without the consent of the other party.

14. Applicable Laws & Attorney Fees - This Agreement shall be interpreted and enforced pursuant to California law. Any action to enforce or interpret this Agreement shall be brought in a court of competent jurisdiction in Santa Clara County, California. Should any legal action be brought by a party for breach of this Agreement or to

enforce any provision of this Agreement the prevailing party shall be entitled to reasonable attorney's fees, court costs and such other costs as may be affixed by the court.

15. Termination - Without limitation to such rights or remedies as City shall otherwise have by law, City shall also have the right to terminate this Agreement for any reason upon written notice to District. In the event of such termination District shall be compensated in proportion to the percentage of services performed through the date of termination.

16. Entire Agreement; Amendment - This writing constitutes the entire Agreement between the parties. No modification shall be effective unless the modification is in writing and signed by all parties to this Agreement.

17. Miscellaneous - All covenants herein shall be conditions. Time shall be of the essence. Failure on the part of either party to enforce any provision of this Agreement shall not be construed as a waiver of the right to compel enforcement of such provision or other provision. The singular number shall include the plural and the masculine gender shall include the feminine gender and neutral gender whenever the context of this Agreement permits. This Agreement shall be deemed to have been drafted equally by both parties.

Date: _____

CITY OF MILPITAS

By: _____
Thomas Wilson, City Manager

Approved as to Form:

By: _____
Steven T. Mattas, City Attorney

Attest:

By: _____
Gall Blalock, City Clerk

MILPITAS UNIFIED SCHOOL DISTRICT

Date: _____

By: _____
Karen Allen
Assistant Superintendent - Business Services

DRAFT

EXHIBIT A

The Milpitas Unified School District will provide transportation for the City of Milpitas Camp Stay & Play program **June 21 - August 13, 2004**. The City will be charged per \$40.00 per hour per bus. Partial hours will be billed in fifteen (15) minute increments. Time begins when the driver reports for duty and ends when the driver finishes at the bus yard. Billed time includes sweeping the bus and paperwork. Time will be referred to as "yard to yard." All documentation of transportation schedules and records will be monitored by the Milpitas Unified School District.

BUS SCHEDULE FOR MILPITAS RECREATION SERVICES CAMP STAY & PLAY PROGRAM

Program begins - June 21, 2004
Program ends - August 13, 2004

Wednesdays -- Wednesdays are field trip days and all pick-ups and drop offs will be at Cardoza Park located off Kennedy Drive and North Park Victoria. All trip pick-ups will begin at 8:30 AM and depart for destinations by 8:45 – 9:00 a.m.. The following is a list of tentative field trips planned for the summer of 2004. Two busses needed.

- **June 25** - Tech Museum – Arrive at 10:00 am --Bus pick-up at 9:30 AM (driver will drop off only and not stay at the tech Museum) and will pick up camp at 3:45 PM to return to Cardoza Park.
- **July 2** - Golfland in Milpitas – **No busses needed, camp will walk to Golfland.**
- **July 7** - Bonfante Gardens
- **July 16** - Monterey Bay Aquarium -- Arrive by 10:30 am – Bus pick-up at 8:30 AM
- **July 23** - Santa Cruz Beach
- **July 30** - San Francisco Zoo
- **August 4** - Golfland in Milpitas – **No busses needed, camp will walk to Golfland.**

Field trips are tentative and can change.

Tuesdays and Thursdays – No Bussing needs for theses days.

The week of **August 9 - 13** is designated as **Trip Week**. Camp Stay & Play goes on a different trip every day for the week of August 9-13, 2004. The time of pick-up is between 8:15 a.m. and 8:30 a.m. and drop-off at the park is 6:00 p.m. Pick-up and drop-off will be at Cardoza Park. Two busses needed. The trip schedule is as follows:

- | | | |
|------------------|---|--|
| Monday | - | Santa Cruz Beach Boardwalk |
| Tuesday | - | Manteca Waterslides |
| Wednesday | - | Marine World |
| Thursday | - | Raging Waters – Bus pick –up at 9:30 a.m. – Bus will drop off camp (driver will not stay at park) and pickup at Paramount’s Great America at 5:15 p.m. |
| Friday | - | Paramount’s Great America – Bus pick –up at 9:30 AM – Bus will drop off camp (driver will not stay at park) and pickup at Paramount’s Great America at 5:15 p.m. |